

Library - Special Purpose Governmental Entity (SPGE) HB1 Compliance Training - Phase 1

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June, 2014

Disclaimer:

I am not an attorney and nothing in this presentation is intended to be legal advice.

This training was created utilizing materials provided by the Kentucky Department for Local Government and other sources and represents current interpretation of this subject matter.

If you need legal advice you should consult an attorney.

HB1

- House Bill 1 passed by the Kentucky General Assembly in 2013
- New Chapter of Kentucky Revised Statutes Regulating Special Purpose Governmental Entities (SPGEs) – Libraries are (in almost all cases) SPGEs
- Goal: To provide transparency for the Public Funds held by SPGEs

HB1

- HB1 was created in response to a November 14, 2012 report released by Adam Edelen, Kentucky Auditor of Public Accounts:

“Ghost Government: A Report on Special Districts in Kentucky”

HB1

- While the report found Kentucky Public Library Districts to be models of good government, the general finding was:

“for generations no Kentuckian has been able to determine how many Special Districts exist, how much money flows through them, where they are located and whether they are compliant with the law.” – Adam Edelen

HB1

HB1 Found:

- There are more than 1,200 SPGEs
- SPGEs spend \$2.7 billion annually
- In all but three counties, taxpayers pay more to SPGEs in property taxes than to their county governments

HB1 – KRS 65A

Under HB1 a SPEC is defined as an entity which:

- Exercises **less** than statewide jurisdiction
- Exists for the purpose of providing one or a limited number of services or functions;
- Is governed by a board, council, commission, committee, authority or corporation with policy-making authority that is **separate** from the state and the governing body of the city, county or cities and counties in which it operates.
- Has the independent authority to generate public funds or **may** receive and expend public funds, grants, awards or appropriations from the state, any agency, city, county or SPGE.

HB1 – KRS 65A

- Compels yearly SPGE registration with the Department for Local Government (DLG)
- Requires annual registration fee
- Sets requirements for financial reporting

HB1

- The Kentucky Department for Local Government is specified as the agency which oversees HB1 implementation.
- DLG is required to provide training
- DLG is required to provide support

HB1

DLG Staff:

- Russ Salsman- Chief of Staff
- Matt Frohlich – Branch Manager
- Darren Sammons – Staff Attorney
- Linda Lilly – Local Government Advisor
- Tammy Vernon – Local Government Advisor
- Lori Wilson – Local Government Advisor

HB1 – Registration – You've done this!

- Registration is required annually
 - All libraries required to register completed Initial registration before December 31, 2013
- Annual registration fee is required
 - No later than 15 days after the start of the fiscal year
- Your financial disclosure information is not considered as filed until the library has registered and paid the fee
- Currently there are 1,500 SPGEs in Registration Database

HB1 Registration

- The registration form is the SPGE 100
- Located at the DLG website: *<http://kydlgweb.ky.gov>*
- Click :
 - Financial Management and Administration
 - Special Purpose Governmental Entities
 - Registration
- A tutorial is provided to guide you through the registration process.

HB1 Registration

Registration Fee:

Libraries with an annual revenue (from all sources) of:

Less than \$100,000	\$25
From \$100,000 -- \$500,000	\$250
Over \$500,000	\$500

HB1 Registration Fee

Proceeds from the fee go to the Auditor of Public Accounts and DLG.

The portion which goes to DLG is used for:

- Creating, Maintaining & Administering the Registry
- Providing Education for the Governing Bodies and Employees of SPGEs
- Enforcing Compliance (KRS 65A.020(5)(a))

HB1 Required Submissions

- The Budget

HB1 – Required Submissions

- Budget – the system will be open to receive submissions 60 days before the start of your fiscal year (May 1)
- Budget submission is due no later than July 15 of each year
- Unless you are required to do so because of some local condition, budgets no longer are submitted to the fiscal court.

HB1 - Budget

- In the past, budget amendments were not required to be submitted anywhere outside the library
- Under HB1, budget amendments must be submitted to DLG no later than the close of the fiscal year in which they occur

HB1 – Required Submissions

- The UFIR

(I know, we also thought it was gone!)

HB1 – Required Submissions

– Uniform Financial Information Report (UFIR)

- Due: May 1st of each year
 - This applies to all public library SPGEs which have taxing authority
 - If you levy a tax each year you must complete the UFIR
 - If you receive tax revenue through the fiscal court or city – and they control the amount – you are not required to submit a UFIR
 - Please contact me if you have any questions about UFIR submission

(The FEDS are to blame!!!!)

HB1

- The Audit

HB1 - Audit

- In 2014 nothing has changed about the audit:
- Audit must be submitted for “review” within 30 days of completion to the fiscal court
- Audit must be submitted to KDLA by August 27th, 2014

HB1 – Required Submissions

– Audit – New Requirements

- Due: Beginning Fiscal Year 2015, due no later than 12 months after close of Fiscal Year
- Contract for audit NOW! All SPGEs will be trying to have the audit done in this timeframe!
- This is already required for submission with your annual report
- Financial thresholds have changed!

HB1 – Required Submissions

Every special purpose governmental entity with the higher of annual receipts from all sources or annual expenditures of less than one hundred thousand dollars (\$100,000) shall:

- 1. Annually prepare a financial statement; and
- 2. Once every four (4) years, contract for the application of an attestation engagement as determined by the DLG

HB1 – Required Submissions

Attestation engagement:

- The DLG shall determine which procedures conducted under attestation standards will apply to special purpose governmental entities meeting the conditions established by HB1.
- The DLG may determine that additional procedures be conducted under attestation standards for specific categories of special purpose governmental entities or for specific special purpose governmental entities, as needed, to obtain the oversight and information deemed necessary by the DLG.

HB1 – Required Submissions

Every special purpose governmental entity with the higher of annual receipts from all sources or annual expenditures equal to or greater than one hundred thousand dollars (\$100,000) but less than five hundred thousand dollars (\$500,000) shall:

- 1. Annually prepare a financial statement; and
- 2. Once every four (4) years, contract for the provision of an independent audit

HB1 – Required Submissions

Every special purpose governmental entity with the higher of annual receipts from all sources or annual expenditures equal to or greater than five hundred thousand dollars (\$500,000) shall:

- 1. Annually prepare a financial statement; and
- 2. Be audited annually

HB1 – Required Submissions

Audit:

To provide for the performance of an audit or attestation engagement as provided in subsection (1)(a) to (c) of KRS 65A.030, the governing body of a special purpose governmental entity shall employ an independent certified public accountant or contract with the Auditor of Public Accounts to conduct the audit or attestation engagement.

(b) The audit or attestation engagement shall be completed no later than twelve (12) months following the close of the fiscal year subject to the audit or the attestation engagement.

HB1 – Required Submissions

The audit or attestation engagement shall conform to:

- a. Generally accepted governmental auditing or attestation standards, which means those standards for audits or attestations of governmental organizations, programs, activities, and functions issued by the Comptroller General of the United States;
- b. Generally accepted auditing or attestation standards, which means those standards for all audits or attestations promulgated by the American Institute of Certified Public Accountants; and
- c. Additional procedures and reporting requirements as may be required by the Auditor of Public Accounts.

HB1 – Required Submissions

- Annual Financial Statements – Remain in the library and are not submitted to DLG
- Audits and Attestation Engagements may be performed by an independent certified public accountant or by contract with the APA

HB1 – Required Submissions

- Notwithstanding any provision of the Kentucky Revised Statutes to the contrary, a unit of government furnishing funds directly to a special purpose governmental entity may require additional audits at the expense of the unit of government furnishing the funds.
- All audit reports, attestation engagement reports, and financial statements of special purpose governmental entities shall be public records

HB1 – Required Submissions



Based on the information submitted by the library the DLG shall determine when each library was last audited, and shall notify the library of when each audit or attestation engagement is due under the new standards and requirements of this section.

HB1 – Online Portal

October 1, 2014 –

Online Portal Opens to the Public

“Citizen Auditors” will have access to SPGE financial disclosure forms, as well as the ability to review registration forms.

Noncompliance

- Districts are considered noncompliant if they:
 - Fail to Submit Information
 - Submit information that does not comply with the Statute
 - Fail to Pay the Registration Fee

Noncompliance

If a District is noncompliant then:

- Within 30 Days DLG will notify the SPGE of noncompliance
- The SPGE has 30 Days from Notification to correct the problem
- 15 days after the SPGE's Deadline, DLG shall Initiate the Statutory Procedure—Notifying the APA, the Establishing Entity, any State Level Oversight Agency and the Finance and Administration Cabinet

Penalties for Noncompliance

KRS 65A.040

- All State Funds will be Withheld
- Publication of a Notice of Noncompliance in the Newspaper
- Possible Audit or Special Examination by the APA at the SPGE's expense
 - Once an APA audit is started there is no action which a library can take which will cause it to cease

Notice of Noncompliance in Newspaper 65A.040(3)(c)

- 45 days after the SPGE is notified of its delinquency, if it has not been corrected, a publication shall be posted in the local circulating newspaper.
- Shall include:
 - Name of the SPGE
 - Statement that it failed to comply with Statutory Reporting Requirements
 - Names of the Board Members
 - Name and Contact Information for the SPGE's Point of Contact AND
 - Any Other Information DLG May Require

Don't Get Smug!

29% of the libraries in Kentucky failed to turn in their Audit on time in 2013 and would be subject to action of noncompliance under the new rules.

HB1

- Required Fee Change Reporting

KRS 65A.100 Fees

Beginning January 1, 2014, the provisions of this section shall apply to any fee or ad valorem tax levied by a special purpose governmental entity that is not otherwise required by statute or ordinance to be adopted or approved through an official act of an establishing entity.

KRS 65A.100 Fees

Any Library which:

1. Adopts a new fee
2. Increases the rate at which any existing fee is imposed

Shall report the fee to the fiscal court of the county where the library is located (unless the library was created by the city)

KRS 65A.100 Fees

The required report shall be for informational purposes only, and the governing body shall not have the authority to adjust, amend, or veto the fee or tax, provided that any other provision of the Kentucky Revised Statutes that provides greater authority for the governing body of a city or county over taxes, fees, or rates imposed by a library shall continue to apply to those taxes, fees, or rates.

KRS 65A.100 Fees

The report of a new fee or fee change shall be made by:

1. Submission of written notification of the fee to the fiscal court at least thirty (30) days before the date the ad valorem tax or fee will be effective; and
2. Presentation of testimony relating to the fee at an open, regularly scheduled meeting of the fiscal court at least ten (10) days prior to the date the ad valorem tax or fee will be effective.

KRS 65A.100 Fees

This report shall not be required for:

- (a) Rental fees;
- (b) Fees established by contractual arrangement;
- (c) Admission fees;
- (e) Any penalty, interest, sanction, or other charge imposed by a library for a failure to pay a charge or fee, or for the violation, breach, or failure to pay or perform as agreed pursuant to a contractual agreement;

KRS 65A.100 Fees

- (f) Amounts charged to customers or contractual partners for nonessential services provided on a voluntary basis;
- (j) Other charges or fees imposed by a special purpose governmental entity for the provision of any service that is also available on the open market.

KRS 65A.100

- This provision also applies to tax rates.
- You must report to the fiscal court by:

KRS 65A.100

- (a) Submission of written notification of the ad valorem tax or fee to the governing body at least thirty (30) days before the date the ad valorem tax or fee will be effective; and
- (b) Presentation of testimony relating to the ad valorem tax or fee at an open, regularly scheduled meeting of the governing body at least ten (10) days prior to the date the ad valorem tax or fee will be effective.

KRS 65A.100

You must make a report and presentation:

- For any ad valorem tax adopted (higher, lower, or the same)(65A.100(2)(a)(3).
- For any new fee or ad valorem tax adopted (65A.100(2)(a)(1).
- Any increase of an existing fee or tax adopted (65A.100(2)(a)(2).

KRS 65A.100

- You are not required to report:
- If a fee remains unchanged
- If a fee is lowered
- If a fee is eliminated

KRS 65A.100

Please note.....

HB 192 (signed into law in March 2014) changes the definition of a “fee”, among other things.

Most of these changes will not impact public libraries, but some will actually make the required reporting simpler.

These changes will be incorporated into the forms used by DLG.

HB 192

- For example, instead of listing “all” taxes and fees collected, you must now list all of the “most significant” taxes and fees – the 5 which produce the most income
- There are other changes imposed by HB 192 – we will have further information as their impact becomes more apparent

HB1

- Code of Ethics

HB1

- Subject to Code of Establishing Entity
 - If more than one, Library Board selects which applies
- If no Establishing Entity, subject to the Code of Ethics of the County where principal business office is located
- May adopt more stringent Code
 - Must send DLG a copy within 21 days after adoption
- If amended, must send DLG a copy within 21 days after amendment

HB1

- Annual financial statement publication

HB1

Pursuant to KRS 65A.080(2) “In lieu of the publication requirements of KRS 424.220, but in compliance with other applicable provisions of KRS Chapter 424, each special purpose governmental entity shall, within sixty (60) days after the close of each fiscal year, publish the location where the adopted budget, financial statements, and most recent audit or attestation engagement reports may be examined by the public.”

This has not changed

HB1

Administrative Dissolution under
KRS 65A.050

Administrative Dissolution under KRS 65A.050

Any special purpose governmental entity that meets at least one (1) of the following criteria may be administratively dissolved:

1. The special purpose governmental entity has taken no action for two (2) or more consecutive years;
2. Following a written inquiry from the entity seeking dissolution, the chair of the special purpose governmental entity either:
 - a. Notifies the entity seeking dissolution in writing that the special purpose governmental entity has not had a governing board, or has not had a sufficient number of governing board members to constitute a quorum for two (2) or more consecutive years;
or
 - b. Fails to respond to the inquiry within thirty (30) days;

Administrative Dissolution under KRS 65A.050

3. The special purpose governmental entity fails to register with the DLG as required by KRS 65A.090;
4. The special purpose governmental entity fails to file the information required by KRS 65A.020 for two (2) or more consecutive years; or

Administrative Dissolution under KRS 65A.050

5. The governing body of the special purpose governmental entity provides documentation to the DLG or the governing body or bodies of the establishing entity that it has unanimously adopted a resolution declaring the special purpose governmental entity inactive.

Administrative Dissolution under KRS 65A.050

Any resident living in or owning property in the area served by the library for which dissolution is sought, who is not a member of the governing body of the library or an immediate family member of a member of the governing body of the library, may file a written objection to the dissolution with the entity seeking dissolution.

The written objection shall state the specific reasons why the library shall not be dissolved, and shall be filed within thirty (30) days after the posting of the notice on the registry as required by paragraph (c) of this subsection.

Administrative Dissolution under KRS 65A.050

Upon the passage of thirty (30) days with no objections filed, and satisfaction of all outstanding obligations of the special purpose governmental entity, the special purpose governmental entity shall be deemed dissolved and, if a dissolution plan was required, the entity seeking dissolution shall proceed to implement the dissolution plan.

Administrative Dissolution under KRS 65A.050

If written objections are received within thirty (30) days of the publication on the registry required by paragraph (c) of this subsection, the dissolution process shall be aborted, and the process established by subsection (2) of this section shall be utilized if it is determined that dissolution should still be sought, notwithstanding any other dissolution process that may exist in the Kentucky Revised Statutes for the type of special purpose governmental entity for which dissolution is sought.

Entity Seeking Dissolution:

1. The DLG;
2. If the special purpose governmental entity was established by one (1) county, or by one (1) city, the governing body of the county or city that established the special purpose governmental entity;
3. If the special purpose governmental entity was established by multiple counties and cities, the governing bodies of all establishing entities; or
4. If the special purpose governmental entity was established other than by an establishing entity, the governing body or bodies of the county or counties in which the special purpose governmental entity provides or provided services, or operates or operated.

HB1 - Timeline

- **June 30, 2014**- Fiscal year SPGE budgets must be passed.

July 15, 2014- Fiscal year 2014-2015 SPGE budgets are due to DLG, yearly fee is due
Yearly fee is calculated based on annual revenue from all sources (collected taxes, grants, state aid, fundraising, etc).

HB1- Timeline

- **October 1, 2014**- Open date for online portal; open to the public.
- **July 1, 2015**- New audit requirements take effect and are applicable to audits of FY2014-2015.
- **July 15, 2015**-FY2015-2016 SPGE budgets are due to DLG; yearly fee is due.

HB1 - Timeline

- **August 15, 2015**- Budget-to-Actual is due for FY2014-2015.

This will be made through the already-submitted financial disclosure form on DLG's web-portal.

HB1 – HB 276

The legislature passed HB276 into law during the legislative session. This law was intended to prevent people from serving on boards of 2 different Special Purpose Government Entities that set tax rates – so it only impacts boards that have the authority to set tax rates.

Unfortunately the law is not clear on whether school board members can also serve on the library board.

HB1- HB276

We are asking for an Attorney General's opinion on this matter.

We are also asking the Attorney General whether people who are currently serving on two SPGE boards currently can finish their terms as this is not clearly stated in the law.

HB1

- Questions?????

DLG

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